

1 JOHN T. PHILIPSBORN - SBN 83944
Law Offices of JOHN T. PHILIPSBORN
2 507 Polk Street, Suite 350
San Francisco, CA 94102
3 (415) 771-3801
jphilipsbo@aol.com
4

5 MARTIN ANTONIO SABELLI - SBN 164772
Law Offices of MARTIN SABELLI
6 740 Noe Street
San Francisco, CA 94114-2923
7 (415) 298-8435
8 msabelli@sabellilaw.com

9 Attorneys for BRIAN WAYNE WENDT

10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 vs.

17 JONATHAN JOSEPH NELSON, et al.,

18 Defendants.
19
20
21

Case No. CR-17-00533-EMC

**MOTION FOR PERMISSION TO FILE
OVERSIZED MEMORANDUM IN
SUPPORT OF WENDT DEFENSE
MOTION TO EXCLUDE OPINION
TESTIMONY FROM FBI OR OTHER
EXPERTS TESTIFYING ABOUT
CELL PHONE COMMUNICATIONS
[CRIMINAL LOCAL RULES 47-1; 47-
2; CIVIL LOCAL RULES, RULE 7-
4(b)]**

**Dept: The Honorable Edward M. Chen,
District Judge**

22 TO: THIS HONORABLE COURT; TO COUNSEL FOR THE GOVERNMENT; TO
23 DEFENSE COUNSEL:

24 BRIAN WENDT, defendant in the above-captioned action, moves this Court
25 pursuant to Criminal Local Rule 47-2 and Civil Local Rule 7-4(b) for an Order permitting
26 him to file a memorandum in support of his motion to exclude the Government's FBI
27 CAST Unit cell phone expert(s) including Special Agent Meredith Sparano under
28 *Daubert/Kumho Tire* and FRE 702, 403.

**MOTION FOR PERMISSION TO FILE OVERSIZED MEMORANDUM IN SUPPORT OF WENDT
DEFENSE MOTION TO EXCLUDE OPINION TESTIMONY FROM ENTERPRISE EXPERTS**

1 The Memorandum as currently drafted is 45 pages long (without the tables) and
 2 exceeds the permissible page limit by 20 pages. As explained in the supporting
 3 Declaration of counsel, this brief has been written with an eye towards raising and
 4 framing the many objections and legal issues that cause the Wendt defense – and most of
 5 the other defenses in the above-captioned case – to seek to exclude the testimony of FBI
 6 Special Agent Meredith Sparano, and all of the maps, illustrations, Powerpoints and other
 7 materials the Government intends to use during her testimony. The pleading was
 8 reviewed by several defense counsel before it was filed, and an effort was made to
 9 include the objections of the defense (with one or two exceptions of defendants who will
 10 not be making objections to the proposed testimony).

11 The motion is based on this statement of the motion, which is required under the
 12 Local Rules, on the record of proceedings to date, including the discussions that have
 13 been held between the Court and counsel for all parties on the matter of the enterprise
 14 experts, and on the supporting declaration of counsel.

15 Dated: January 29, 2020

Respectfully Submitted,
 MARTIN ANTONIO SABELLI
 JOHN T. PHILIPSBORN

19 /s/ John T. Philipsborn
 20 JOHN T. PHILIPSBORN
 21 Attorneys for Brian Wayne Wendt

PROOF OF SERVICE

I, Melissa Stern, declare:

That I am over the age of 18, employed in the County of San Francisco, California, and not a party to the within action; my business address is Suite 350, 507 Polk Street, San Francisco, California 94102.

On today's date, I served the within document entitled:

MOTION FOR PERMISSION TO FILE OVERSIZED MEMORANDUM IN SUPPORT OF WENDT DEFENSE MOTION TO EXCLUDE OPINION TESTIMONY FROM ENTERPRISE EXPERTS [CRIMINAL LOCAL RULES 47-1; 47-2; CIVIL LOCAL RULES, RULE 7-4(b)]

- () By placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Francisco, CA, addressed as set forth below;
- (X) By electronically transmitting a true copy thereof through the Court's ECF system;
- () By having a messenger personally deliver a true copy thereof to the person and/or office of the person at the address set forth below.

AUSA Kevin Barry
AUSA Ajay Krishnamurthy
AUSA Lina Peng
All defense counsel through ECF

Executed this January 29, 2020, at San Francisco, California.

Signed: /s/ Melissa Stern
Melissa Stern

MOTION FOR PERMISSION TO FILE OVERSIZED MEMORANDUM IN SUPPORT OF WENDT DEFENSE MOTION TO EXCLUDE OPINION TESTIMONY FROM ENTERPRISE EXPERTS